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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,258	07/15/2003	Vinoj N. Kumar	1-1	9759

7590 01/22/2009
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560

EXAMINER

NASH, LASHANYA RENEE

ART UNIT	PAPER NUMBER
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2453

MAIL DATE	DELIVERY MODE
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01/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/620,258	Applicant(s) KUMAR ET AL.	
	Examiner LASHANYA R. NASH	Art Unit 2453	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-17.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/ARIO ETIENNE/
Supervisory Patent Examiner, Art Unit 2457

/LaShanya R Nash/
Examiner, Art Unit 2453

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 12 January 2009 have been fully considered but they are not persuasive.

In considering Applicant's arguments, the following remarks are noted:

(I) Applicant contends that the combination of Smith and St. Hontas so as to reach the limitations of claim 1, one would not have been motivated to have done so in light of an explicit teaching away from the proposed combination.

(II) Applicant contends that Bae fails to meet the limitations of claim 6.

(III) Applicant contends that Bae contains no teaching or suggestion directed to generating traffic bursts, much less doing so in a manner which tends to compensate for temporary reductions in the amount of traffic of another type so as to substantially maintain a particular level of traffic flow.

In considering (I), Applicant contends that the combination of Smith and St. Hontas so as to reach the limitations of claim 1, one would not have been motivated to have done so in light of an explicit teaching away from the proposed combination. Examiner respectfully disagrees. Examiner asserts that although Smith discloses examples and preferred embodiments employed in order to simulate the bursty nature of ATM traffic, this disclosure does not constitute a teaching away from a broader disclosure or non-preferred embodiment of an autoregressive model which is evidently a well-known modeling technique for an ATM environment. Furthermore, it is important to note that Smith expressly discloses that the autoregressive model has been known to be successful in certain packet-based environments, like ATM (Smith column 1, lines 57-64). Therefore, in response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case one of ordinary skill in the art would have been so motivated to accordingly modify the method of Smith, so as to provide flexibility to emulate a wide range of ATM traffic profiles (St. Hontas, Abstract).

In considering (II), Applicant contends that Bae fails to meet the limitations of claim 6. Examiner respectfully disagrees. Examiner asserts that Bae discloses that cells are added to traffic based on the generation of tokens. Furthermore, the threshold amount for generation of tokens is directly related to the burstiness of the transmission. That is, as the cells are added according to the distributed tokens, a larger threshold for these tokens directly translates to a larger amount of cells added to the traffic burst. Bae discloses that if the threshold value is exceeded then the process of token generation stops, or implicitly if the threshold level is not reached then additional tokens are generated and thus traffic is added. Applicant suggests that Bae fails to teach adding traffic if the threshold is not reached, this is evidently incorrect. Examiner asserts that this aforementioned teaching is clearly analogous to Applicant's claim, as compensatory traffic is added to the burst container based on the comparison level. As a result, Examiner asserts that Bae teaches the limitations of Applicant's claim language as set forth below in the Office action.

In considering (III), Applicant contends that Bae contains no teaching or suggestion directed to generating traffic bursts, much less doing so in a manner which tends to compensate for temporary reductions in the amount of traffic of another type so as to substantially maintain a particular level of traffic flow. Examiner respectfully disagrees. Examiner asserts that Bae expressly discloses allowing for a certain degree of burstiness to further enforce control of the traffic flow. Additionally, Bae discloses that the traffic flow is controlled through the distribution of tokens, which creates bursts that maintain an average input rate of the traffic. Clearly, it can be determined that in order to maintain an average input rate, that the bursts must correspond to the amount of traffic entering the network, which is inclusive of reductions or increases. As a result, Examiner asserts that Bae teaches the limitations of Applicant's claim language as set forth below in the Office action. .